

# CITY of ALBUQUERQUE

## TWENTY THIRD COUNCIL

COUNCIL BILL NO. RA-19-4 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Cynthia D. Borrego, Ken Sanchez

### 1 RULES AMENDMENT

2 AMENDING THE CITY COUNCIL RULES OF PROCEDURE: ARTICLE II,  
3 SECTIONS 1 AND 2, DEALING WITH THE TIMING OF THE ELECTION OF THE  
4 PRESIDENT AND VICE PRESIDENT; ARTICLE II, SECTION 3 RELATING TO  
5 POWERS AND DUTIES OF THE PRESIDENT; ARTICLE I SECTION 8(H), AND  
6 ARTICLE III SECTION 4(B) TO ADJUST CROSS REFERENCES; ARTICLE III  
7 SECTION 3 RELATING TO VOTES REQUIRED FOR RULE SUSPENSIONS;  
8 ARTICLE III, SECTION 6(A) RELATING TO BILL SUBMISSION AND VOTING  
9 REQUIREMENTS; ARTICLE III, SECTION 6(C) RELATING TO BILL TITLES;  
10 ARTICLE III, SECTION 8 RELATING TO APPROVALS; AND ARTICLE III,  
11 SECTION 24 PRESCRIBING LAND USE HEARING OFFICER PROCEDURES  
12 BE IT APPROVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY  
13 OF ALBUQUERQUE:

14 SECTION 1. Article II, Sections 1 and 2 of the City of Albuquerque City  
15 Council Rules of Procedure are hereby amended as follows:

16 "Section 1. Election of President. At the first meeting of the City  
17 Council in the month of ~~[December~~ January] of each year, the City Council  
18 shall elect one of its members to act as President of the City Council. The  
19 President shall serve at the pleasure of the City Council until ~~[December 1<sup>st</sup> of~~  
20 ~~the next~~ the first meeting in the month of January of the following] year or  
21 until his or her successor has been selected. In the event that there shall  
22 occur a vacancy in the office of President, except one provided for in Article V  
23 Section 5.(c) of the City Charter, an election shall be held at the next regularly  
24 scheduled meeting of the City Council to fill the vacancy. Election shall  
25 require a majority of all Councilors.

[Bracketed/Underscored Material] - New  
[Bracketed/Strikethrough Material] - Deletion

1           Section 2.       Election of Vice-President. At the first meeting of the  
2 City Council in the month of [~~December~~ January] of each year, the City  
3 Council shall elect one of its members to act as Vice-President of the City  
4 Council. The Vice-President shall serve at the pleasure of the City Council  
5 until [~~December 1<sup>st</sup> of the next~~ the first meeting in the month of January of the  
6 following] year or until his or her successor has been selected. In the event  
7 that there shall occur a vacancy in the office of Vice President, an election  
8 shall be held at the next regularly scheduled meeting of the City Council to fill  
9 the vacancy. Election shall require a majority of all Councilors.”

10       SECTION 2. Article II, Section 3 of the City of Albuquerque City Council  
11 Rules of Procedure is hereby amended to add subparagraph (B)(15) as  
12 follows:

13       “(15) In the absence of a voluntary sponsor, the President shall be noted  
14 as the designated sponsor for any municipal annexation or zone map  
15 amendment request (other than appeals) that require final action by the City  
16 Council. For this purpose, designation as sponsor does not indicate support  
17 or opposition to the item sponsored.”

18       SECTION 3. Article I, Section 8(H), and Article III, Section 4(B) of the City of  
19 Albuquerque City Council Rules of Procedure is hereby amended as follows:

20       “H. The first 30 individuals will be allowed to speak under general public  
21 comment (Item [9][10]) of the agenda. Individuals who have signed up to  
22 provide general public comment to the Council but who, due to this limitation,  
23 are not able to speak may either provide general public comment at the end of  
24 the meeting under ‘Other Business’ or inform Council staff that they would like  
25 to provide their comments at the next regular Council meeting. Individuals  
26 who request to speak at the next regular Council meeting will be placed at the  
27 front of the public comment sign up list at that meeting.

28       ...

29       B. The City Council shall not allow general public comments (Item  
30 [9][10] above) at Special Meetings.”

31       SECTION 4. Article III, Section 3 of the City of Albuquerque City Council  
32 Rules of Procedure is hereby amended as follows:

1       “Section 3. Suspension of Rules. Except for charter, statutory or  
2 ordinance provisions, these rules, or any part thereof, may be temporarily  
3 suspended by a vote of two-thirds of the Councilors present. The following  
4 shall apply if fewer than nine Councilors are present:

5	Councilors Present	2/3 Vote
6	8	6
7	7	5
8	6	4
9	5	4
10	[4	3]

11       When the suspension of a rule is requested, and no objection is offered,  
12 the President shall announce the rule suspended, and the City Council may  
13 proceed accordingly.”

14       SECTION 5. Article II, Section 8(H) and Article III, Section 4(B) of the City of  
15 Albuquerque City Council Rules of Procedure is hereby amended as follows:

16       Article I, Section 8...

17       “H. The first 30 individuals will be allowed to speak under general public  
18 comment (Item [9][10]) of the agenda. Individuals who have signed up to  
19 provide general public comment to the Council but who, due to this limitation,  
20 are not able to speak may either provide general public comment at the end of  
21 the meeting under ‘Other Business’ or inform Council staff that they would like  
22 to provide their comments at the next regular Council meeting. Individuals  
23 who request to speak at the next regular Council meeting will be placed at the  
24 front of the public comment sign up list at that meeting.”

25       Article III, Section 4...

26       “B. The City Council shall not allow general public comments (Item  
27 [9][10] above) at Special Meetings.”

28       SECTION 6. Article III, Section 6(A)(3) and 6(A)(7) of the City of  
29 Albuquerque City Council Rules of Procedure is hereby amended as follows:

30       “(3) Bills may be introduced by any Councilor at any regular meeting of  
31 the City Council, provided that any bill to be submitted for a regular City  
32 Council meeting must be presented in both hard copy and ~~on a DOS~~  
33 ~~formatted diskette or compact disc (cd)~~ electronic copy to the Clerk of the

Council prior to 10:00 a.m. on the Tuesday preceding the next regular City Council meeting. Bills may not be introduced at Special Council meetings. The Clerk of the Council shall assign each bill a number. The Director of Council Services shall prepare a list of introductions to be delivered to the Councilors on the ~~[Wednesday~~ Friday] preceding the next regular City Council meeting.

...

(7) ~~[If~~ Unless a more stringent voting standard is otherwise required by law, if] a majority of a quorum of the Councilors present at the City Council meeting vote in favor of adopting a bill, it is adopted.”

SECTION 7. Article III, Section 6(C) of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

~~“[C. The titles of bills shall be styled as follows:~~

~~(1) Titles of bills which require studies for or reports to the City Council shall include the phrase "REQUIRING REPORT."~~

~~(2) Titles of bills which require the appointment of a committee, task force, board, commission or other similar official City panel shall include the phrase "CREATING PANEL."~~

~~(3) Titles of bills which contain one or more City policy directives to be adopted by resolution shall include the phrase "ADOPTING POLICY."~~

~~The transmittal memo that accompanies Administration bills which include elements listed above shall emphasize the inclusion of those elements.]”~~

SECTION 8. Article III, Section 8 of the City of Albuquerque City Council Rules of Procedure is hereby amended as follows:

“Section 8. Approvals.

A. Approvals are defined as that class of City Council action in which the City Council as the Governing Body shall make the final determination upon the recommendation of the Mayor or upon the recommendation of, or appeals from, a duly authorized board or commission of City government. Those items requiring approval of the City Council shall include but not be limited to: appeals ~~[from the Environmental Planning Commission, Board of~~

1 ~~Appeals for Zoning Special Exceptions, Development Review Board and~~  
2 ~~Landmarks and Urban Conservation Commission~~ authorized under the  
3 Integrated Development Ordinance]; improvement district matters including  
4 protest; appointments to boards and commissions; real property acquisitions  
5 and dispositions, and purchases. Approvals other than appeals are termed  
6 executive communications or City Council communications.

7 B. Appeals of Land Use Regulation Decisions.

8 (1) Appeal procedures and special majorities required shall be as  
9 specified in applicable ordinances. (See the ~~[Zoning Code~~ Integrated  
10 Development Ordinance], Section 14-16-~~[4-4~~ 6-4(U)] ROA 1994.

11 (2) Notice for any [full hearing on an] appeal ~~[hearing by the full City~~  
12 ~~Council]~~ shall be given at ~~[a regular meeting or Committee meeting of]~~ the City  
13 Council ~~[at least two weeks prior to the meeting when the hearing is held. An~~  
14 ~~appeal to the City Council, which is not referred to Committee, shall be heard~~  
15 ~~at an announced hearing no earlier than the next regular meeting of the City~~  
16 ~~Council following the City Council meeting at which the appeal is received.~~  
17 meeting at which the City Council votes to reject the recommendation of its  
18 Land Use Hearing Officer].

19 (3) ~~[Impacts of Committee Actions.~~

20 ~~\_\_\_\_\_ (a) The following actions on Committee reports shall result in the~~  
21 ~~appeal being placed on the agenda for hearing at a meeting of the City Council~~  
22 ~~at least two weeks following: acceptance of a recommendation that an appeal~~  
23 ~~"be heard" or rejection of a recommendation that an appeal "not be heard",~~  
24 ~~that "withdrawal be approved" or that the appeal "be remanded".~~

25 ~~\_\_\_\_\_ (b) The following actions on Committee reports shall result in~~  
26 ~~rejection of the appeal: acceptance of a recommendation that an appeal "not~~  
27 ~~be heard" or rejection of a recommendation that an appeal "be heard".~~

28 ~~\_\_\_\_\_ (c) The following actions on Committee reports shall end City~~  
29 ~~Council consideration of the appeal: acceptance of a recommendation that~~  
30 ~~"withdrawal be approved" or that the appeal "be remanded", or rejection of a~~  
31 ~~recommendation that "withdrawal not be approved".~~

32 ~~—(4)]~~ Time allowed for appeal hearings shall be as follows:

1 (a) The sequence and normal maximum times allowed shall be as  
2 follows:

3 8 minutes for appellant;  
4 10 minutes for party opponent(s) of the appeal;  
5 3 minutes for city staff, unless that staff spoke as  
6 opponents;  
7 2 minutes for appellant rebuttal;  
8 discussion among Councilors.

9 (b) If there are no party opponents of the appellant, the appealed  
10 board or commission is allowed up to 8 minutes in the appeal hearing.

11 (c) The City Council may combine separate appeals of the same  
12 action, in which case each appeal will receive an equal share of the appellant's  
13 time. The Presiding Councilor shall indicate in advance the division of  
14 opponent time if more than one private party is shown by the record to be in  
15 opposition.

16 (d) The Presiding Councilor shall follow the above maximum  
17 times unless, based on the complexity of the issues, the Presiding Councilor  
18 gives notice of differing times to all parties. In all cases, the maximum time  
19 available to proponents and opponents shall be equal, in accordance with the  
20 pattern in (a) above.

21 (e) The parties shall decide on the speakers to use the time  
22 assigned to the appellant and the opponents of the appeal.

23 (5) Evidence:

24 (a) The City Council will make its decision and findings  
25 exclusively on the record of the decision appealed including any  
26 supplemental material that was accepted by its Land Use Hearing Officer.  
27 ~~supplemented by any evidence (offerings of fact or proof) allowed to be~~  
28 ~~presented and matters officially noticed.~~

29 ~~1) New evidence may be accepted in accordance with the~~  
30 ~~rules herein.~~

31 ~~2) Councilors' questions on whether evidence should be~~  
32 ~~admitted can be answered. The Presiding Officer should keep any such~~  
33 ~~questions and answers brief.~~

1 ~~3) If the City Council determines that certain additional~~  
2 ~~evidence proposed to the City Council is necessary and appropriate for the~~  
3 ~~proper disposition of the matter it may take evidence or appoint a Hearing~~  
4 ~~Officer to take such evidence as it may direct and report the same to the City~~  
5 ~~Council with the Hearing Officer's findings as to the significance of that~~  
6 ~~evidence, which evidence and findings shall constitute a part of the~~  
7 ~~proceedings upon which the determination of the City Council shall be made.~~

8 ~~4) New evidence which could have been put in the record~~  
9 ~~during the previous hearing(s) is not favored for introduction at a City Council~~  
10 ~~hearing. New evidence which clarifies evidence already in the record may be~~  
11 ~~allowed. New evidence which is offered to contradict evidence in the record~~  
12 ~~may be allowed; if such evidence appears convincing and is on an important~~  
13 ~~point, it can justify remand. Other new evidence offered on an important~~  
14 ~~factual matter will rarely be allowed; such new evidence when tendered can~~  
15 ~~justify remand even if it is not allowed by the City Council. The above are not~~  
16 ~~the exclusive bases for remand. If new evidence is allowed, it shall be~~  
17 ~~restricted to a type and subject deemed appropriate by the City Council.~~

18 ~~5) When a hearing will be expedited and the interest of the~~  
19 ~~parties will not be prejudiced substantially, the City Council may vote to~~  
20 ~~accept specific items of evidence in written form; the fact that the author of~~  
21 ~~written evidence is not present for cross examination does not disallow its~~  
22 ~~admission unless the City Council or City Council Hearing Officer rules that~~  
23 ~~such absence makes the particular evidence inappropriate.]~~

24 ~~[(a)] [Witnesses Parties to an appeal and their representatives]~~  
25 ~~shall be sworn: "Do you swear (or affirm) that you will tell the truth, the whole~~  
26 ~~truth, and nothing but the truth?" Attorneys may testify on their attorney's~~  
27 ~~oath.~~

28 ~~[(b) Cross-examination of witnesses is allowed concerning the~~  
29 ~~evidence and opinions they have presented in testimony to the City Council in~~  
30 ~~order to disclose facts truly and fully. Cross-examination questions may be~~  
31 ~~asked only by parties to the appeal. Any such questions shall be asked~~  
32 ~~immediately following the witnesses' testimony. Questions may be asked by~~  
33 ~~an adverse party or the party's attorney or representative of record. Improper~~

~~questions will be disallowed by the Presiding Officer. The Presiding Officer may restate questions to the witness and may require that questions be addressed to the Presiding Officer. The Presiding Officer will rule irrelevant questions and unnecessarily long answers out of order.]~~

(6) With regard to any appeal that has been filed with and is pending before the City Council:

(a) *Communication with Parties.* No Councilor shall communicate outside a hearing with a party or representative of the party about the appeal, and no party or representative of a party shall communicate outside a hearing with a Councilor about the appeal. Any facts or documents not in the record before the City Council when the appeal is filed are subject to the rules regarding new evidence that are set forth herein;

(b) *Communication with Persons other than Parties.* No Councilor shall knowingly communicate with a member of the public or an organization about the subject of the appeal, and persons or organizations not parties to the appeal shall not communicate with any Councilor about the subject of the appeal and attempt to influence the outcome of the appeal. Information and correspondence that is not in the record at the time the appeal is filed is not evidence and should not be considered in making a decision regarding the outcome of the appeal unless accepted as new evidence.

(c) Any correspondence regarding the subject of an appeal that is an *ex parte* communication and is inadvertently received by a Councilor shall be delivered to the Clerk of the Council and be available for review by the parties. Any correspondence received by Council Services regarding the subject of an appeal shall be held by the Clerk of the Council and not distributed to the Councilors until the City Council has finally decided the appeal and the time for filing an appeal of the City Council decision has run. All such correspondence shall be available for review by the parties upon request.

(d) Notwithstanding the above, staff of the Council Services and other City departments (other than employees of a City department which is the appellant or appellee, or employees who have a personal or pecuniary interest in the outcome of the appeal) may, upon the request of a Councilor,



1 communicate with that Councilor at any time and by any means. Copies of  
2 any written materials from City staff shall be distributed to all parties.

3 (7) A Councilor or City Council Hearing Officer shall withdraw from any  
4 proceedings in which he or she has a direct or indirect financial conflict of  
5 interest or otherwise cannot accord a fair and impartial hearing.

6 (8) Votes on appeals shall be as follows:

7 (a) ~~[In Committee, no action has been taken until a motion has~~  
8 ~~been adopted by a majority of the Committee members present.~~

9 ~~\_\_\_\_\_~~(b)] At a meeting of the City Council, an action to grant or deny an  
10 appeal must be in accordance with Section 14-16-~~[4-4(E)(5) 6-4(U)(3)(e)]~~ of the  
11 ~~[Zoning Code~~ Integrated Development Ordinance~~].~~ A motion to defer~~],~~  
12 continue, or remand is adopted by a majority of the Councilors present.

13 ~~[(c) A motion to remand is adopted by five (5) or more votes.]~~

14 C. Executive Communications.

15 (1) Executive communications may be withdrawn by a memo from  
16 the Mayor prior to City Council action with the approval of the City Council.  
17 Executive communications may not be amended.

18 (2) Appointments.

19 a. Executive Communication appointments shall be sent to  
20 the City Council separately for individual consideration. An appointment,  
21 which is not referred to Committee, shall be considered at the next regular  
22 meeting of the City Council, except appointments to the Environmental  
23 Planning Commission, the ~~[Zoning Board of Appeals, and the]~~ Landmarks  
24 ~~[and Urban Conservation]~~ Commission shall be considered by the Land Use,  
25 Planning and Zoning Committee of the City Council.

26 b. The following City Council actions on Committee  
27 reports shall result in the appointment being placed on the agenda for  
28 approval at the next regular meeting of the City Council unless it is  
29 unanimously recommended by the Committee to whom the appointment has  
30 been referred that the appointment be placed on the agenda for approval at  
31 the meeting at which the Committee report is considered: acceptance of a  
32 recommendation that an appointment "be confirmed" or rejection of a  
33 recommendation that an appointment "not be confirmed".

1 (3) Other Approvals. An approval which is not an appeal or an  
2 appointment and which is not referred to committee shall be considered no  
3 earlier than the next regular City Council meeting following introduction.

4 (4) Any approval which is not adopted by the City Council within  
5 one year from the date of its conveyance to the City Council shall be deemed  
6 "died on expiration," and no further action shall be taken by the Council or its  
7 committees on the approval."

8 SECTION 9. Article III, Section 24 of the City of Albuquerque City Council  
9 Rules of Procedure is hereby amended as follows:

10 "Section 24. Land Use Hearing Officer Rules of Procedure and  
11 Qualifications

12 ~~[Pursuant to Section 14-16-4-4 ROA 1994 (the Appeal section of the~~  
13 ~~Zoning Code), the Council is to adopt rules of procedure and regulations~~  
14 ~~setting forth the qualifications for the Land Use Hearing Officer. The following~~  
15 ~~rules are adopted for appeals of land use decisions:~~

16 1. Notice for any appeal hearing by the Land Use Hearing Officer  
17 ("Hearing Officer") shall be given ~~[at the City Council meeting at which the~~  
18 ~~appeal is introduced or at least two weeks prior to the hearing held by the~~  
19 ~~Hearing Officer.~~ consistent with Section 14-16-6-4(U)(3)(d)(1) of the Integrated  
20 Development Ordinance.]

21 2. The sequence and the time allowed for appeal hearings shall be as  
22 follows:

- 23 25 minutes for appellant;  
24 30 minutes for party opponent(s) of the appeal;  
25 125 minutes for city staff, unless that staff spoke as  
26 opponents;  
27 5 minutes for appellant rebuttal.

28 3. The Hearing Officer may combine separate appeals of the same  
29 action, in which case each appeal will receive an equal share of the appellants'  
30 time. The Hearing Officer shall indicate in advance the division of opponent  
31 time if more than one private party is shown by the record to be in opposition.

32 4. The Hearing Officer shall follow the above maximum times unless,  
33 based on the complexity of the issues, the Hearing Officer gives notice of

1 differing times to all parties. In all cases, the maximum time available to  
2 proponents and opponents shall be equal, in accordance with the pattern  
3 above.

4 5. The parties shall decide on the speakers to use the time assigned to  
5 the appellant and the opponents of the appeal.

6 6. Evidence:

7 (A) The Hearing Officer shall make his or her decision and findings  
8 on the record of the decision appealed supplemented by any evidence allowed  
9 to be presented and matters officially noticed.

10 (B) If the Hearing Officer determines that certain additional  
11 evidence proposed is necessary and appropriate for the proper disposition of  
12 the matter he or she may take that evidence.

13 (C) New evidence which could have been put in the record during  
14 the previous hearing(s) is not favored for introduction at a Hearing Officer  
15 hearing. New evidence which clarifies evidence already in the record may be  
16 allowed. New evidence which is offered to contradict evidence in the record  
17 may be allowed; if such evidence appears convincing and is on an important  
18 point, it can justify the recommendation of a remand. If new evidence is  
19 allowed, it shall be restricted to a type and subject deemed admissible by the  
20 Hearing Officer.

21 (D) When a hearing will be expedited and the interest of the  
22 parties will not be prejudiced substantially, the Hearing Officer may accept  
23 specific items of evidence in written form; the fact that the author of written  
24 evidence is not present for cross examination does not disallow its admission  
25 unless the Hearing Officer rules that such absence makes the particular  
26 evidence inappropriate.

27 (E) Witnesses and presenters shall be sworn: "Do you swear (or  
28 affirm) that you will tell the truth, the whole truth, and nothing but the truth?"  
29 Attorneys may testify on their attorney's oath.

30 (F) Cross-examination of witnesses is allowed concerning the  
31 evidence and opinions they have presented in testimony to the Hearing Officer  
32 in order to disclose facts truly and fully. Cross-examination questions may be  
33 asked only by parties to the appeal. Any such questions shall be asked

1 immediately following the witnesses' testimony. Questions may be asked by  
2 an adverse party or the party's attorney or representative of record. Improper  
3 questions will be disallowed by the Hearing Officer and the Hearing Officer  
4 may impose reasonable time limits on cross-examination. The Hearing Officer  
5 may restate questions to the witness and may require that questions be  
6 addressed to the Hearing Officer. The Hearing Officer will rule irrelevant  
7 questions and unnecessarily long answers out of order.

8 7. With regard to any appeal that has been filed with and is pending  
9 before the City Council and referred to the Hearing Officer:

10 (A) Communication with Parties. No City Councilor shall  
11 communicate outside a hearing with a party or representative of a party about  
12 an appeal, and no party or representative of a party shall communicate outside  
13 a hearing with a Councilor about an appeal. Any facts or documents not in the  
14 record before the City Council when an appeal is filed are subject to the rules  
15 regarding new evidence that are set forth herein.

16 (B) Communication with Persons other than Parties. No Councilor  
17 shall knowingly communicate with a member of the public or an organization  
18 about the subject of the appeal, and persons or organizations not parties to  
19 the appeal shall not communicate with any Councilor about the subject of the  
20 appeal and/or attempt to influence the outcome of the appeal. Information and  
21 correspondence that is not in the record at the time the appeal is filed is not  
22 evidence and should not be considered in making a decision regarding the  
23 outcome of the appeal unless accepted as new evidence.

24 (C) Communication Between Hearing Officer and Councilor. No  
25 Councilor shall knowingly communicate with the Hearing Officer about the  
26 subject of a pending appeal, and the Hearing Officer shall not communicate  
27 with any Councilor about the subject of a pending appeal other than by written  
28 findings and recommended decision as set forth herein.

29 (D) Communication with Parties by Hearing Officer. The Hearing  
30 Officer shall not communicate outside a hearing with a party or representative  
31 of a party about an appeal, and no party or representative of a party shall  
32 communicate outside a hearing with the Hearing Officer about an appeal. Any  
33 facts or documents not in the record before the Hearing Officer when an

1 appeal is filed are subject to the rules regarding new evidence that are set  
2 forth herein.

3 (E) Communication with Persons other than Parties. The Hearing  
4 Officer shall not knowingly communicate with a member of the public or an  
5 organization about the subject of the appeal, and persons or organizations not  
6 parties to an appeal shall not communicate with the Hearing Officer about the  
7 subject of an appeal and/or attempt to influence the outcome of an appeal.  
8 Information and correspondence that is not in the record at the time an appeal  
9 is filed is not evidence and should not be considered in making a decision  
10 regarding the outcome of an appeal unless accepted as new evidence.

11 (F) Any correspondence regarding the subject of an appeal that is  
12 an ex parte communication and is inadvertently received by the Hearing  
13 Officer shall be kept separately from the record on the appeal. The Hearing  
14 Officer shall advise the parties to the appeal of the receipt of the ex parte  
15 written communication which shall be available for review by the parties.

16 (G) Notwithstanding the above, staff of the Council Services and  
17 other City departments (other than employees of a City department which is  
18 the appellant or appellee, or employees who have a personal or pecuniary  
19 interest in the outcome of the appeal) may, upon the request of the Hearing  
20 Officer, communicate with the Hearing Officer at any time and by any means.

21 8. The Hearing Officer shall recuse himself or herself from any  
22 proceedings in which he or she has a direct or indirect financial conflict of  
23 interest or otherwise cannot accord a fair and impartial hearing. In the event  
24 that the Hearing Officer has a conflict of interest regarding a particular appeal  
25 or a party to that appeal, the Hearing Officer shall immediately notify the  
26 Council of the conflict and the appeal shall be scheduled to be heard by the  
27 full Council~~[, or may be assigned to a different hearing officer of the City~~  
28 Council's selection if appropriate].

29 9. The Hearing Officer shall enter his or her findings and recommended  
30 decision ("decision")~~[, within 5 days after the close of the hearing]~~ and ~~[shall]~~  
31 forward the decision and findings to the parties and the Council within ~~[5 10]~~  
32 days of ~~[entering the decision]~~ the close of the hearing].

1           10.The Hearing Officer shall base his or her decision on a  
2 preponderance of the evidence. He or she may reweigh the evidence in the  
3 record.

4           11.The Hearing Officer may decide to recommend that the Council grant  
5 ~~[, in whole or in part, an appeal, deny, or deny an appeal]~~ in whole or in part[,  
6 ~~an appeal, or remand an appeal for reconsideration if the remand is necessary~~  
7 ~~to clarify or supplement the record or if remand would more expeditiously~~  
8 ~~dispose of the matter~~ If the Hearing Officer determines that the matter should  
9 be remanded, such remand may be ordered consistent with Section 14-16-6-  
10 4(U)(3)(d)(6)].

11           12.When the Council receives the Hearing Officer's findings and  
12 decision, the Council shall place the decision on the agenda of the next  
13 regular full Council meeting provided that there is a period of at least 10 days  
14 between the receipt of the decision and the Council meeting. The parties may  
15 submit comments to the Council [through the Clerk of the Council] regarding  
16 the Hearing Officer's decision and findings provided such comments are in  
17 writing and received by the [Clerk of the] Council and the other parties of  
18 record four [(4) consecutive] days prior to the Council [meeting "accept or  
19 reject" hearing]. [Parties submitting comments in this manner must include a  
20 signed, written attestation that the comments being submitted were delivered  
21 to all parties of record within this time frame, which attestation shall list the  
22 individual(s) to whom delivery was made. Comments received by the Clerk of  
23 the Council that are not in conformance with the requirements of this Section  
24 will not be distributed to Councilors.]

25           13.The Council shall vote whether to accept or reject the Hearing  
26 Officer's decision and findings. [The Council will make its decision to accept  
27 or reject based solely on the record before it, and shall not hear from the  
28 parties or any other person at its hearing on this question.] A motion to reject  
29 or accept the Hearing Officer's decision and findings must be approved by a  
30 majority of the membership of the Council.

31           14.The Council may accept the decision and amend the findings of the  
32 Hearing Officer if such an amendment is consistent with the decision of the  
33 Hearing Officer.

1           15.If the Hearing Officer’s decision is rejected, ~~[the appeal shall be~~  
2 ~~scheduled to be heard by the full Council no earlier than the next regular~~  
3 ~~meeting of the full Council.~~ or if the Council fails to either accept or reject the  
4 recommendation, the City Council may take any one of the actions identified  
5 in Section 14-16-6-4(U)(3)(e)(4) of the Integrated Development Ordinance.]

6           16.If the Hearing Officer rules are in conflict with the ~~[Zoning Code~~  
7 Integrated Development Ordinance], the ~~[Zoning Code~~ Integrated Development  
8 Ordinance] shall prevail. If the Hearing Officer rules are silent regarding an  
9 area that is addressed by the ~~[Zoning Code~~ Integrated Development  
10 Ordinance], the ~~[Zoning Code~~ Integrated Development Ordinance] shall  
11 apply.”

12       SECTION 10.       SEVERABILITY CLAUSE. If any section, paragraph,  
13 word or phrase of this rules amendment is for any reason held to be invalid or  
14 unenforceable by any court of competent jurisdiction, such decision shall not  
15 affect the validity of the remaining provisions of this rules amendment. The  
16 Council hereby declares that it would have passed this rules amendment and  
17 each section, paragraph, sentence, clause, word or phrase thereof irrespective  
18 of any provision being declared unconstitutional or otherwise invalid.

19       SECTION 11.       EFFECTIVE DATE. This rules amendment shall take  
20 effect immediately upon adoption.  
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